IN THE HIG COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 55/2005
AND
CIVIL APPLICATION NO. 195/2006

1. Mr. Minguel Fernandes,
son of late Francisco Fernandes,
aged 44 years.

2. Mrs. Sandra Fernandes,
wife of Minguel Fernandes,
aged 37 years, both residing at
H.No. 177, Ward Bepquegal,
Curchorem Village Quepem,
South Goa, Goa. ..... Appellants.

V/s.

1. Chief Secretary,
State of Goa,
Secretariat Building,
Panaji, Goa.

2. Conservator of Forests,
Forest Department,
Junta Building,
Panaji, Goa.

3. Range Forest Officer,
Forest Office,
Khairicate, Sanguem. ..... Respondents.

Shri Sudin M. S. Usgaonkar, Advocate for the appellants.

Shri S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Govt. Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 9TH NOVEMBER, 2006.

ORAL JUDGMENT :

Heard learned Counsel for the parties. The appellants-plaintiffs have preferred this appeal against the order passed by the trial Court, dismissing their application for temporary injunction which was made against the respondents-defendants, including the State.

2. After hearing both the parties for sometime and perusing the record, it was submitted by the parties that the stage of recording evidence in the said suit has already commenced and the plaintiff's affidavit of evidence is already on record since March, 2006. In view of this position, I am of the view that it would be in the interest of both the parties to prosecute the cause in the suit itself, which would be the final adjudication instead of prosecuting the present appeal which would not put an end to the dispute at any rate between the parties even if it is adjudicated one way or the other.

3. Under the circumstances, it is, hereby, directed that the trial Judge shall proceed with the adjudication of the suit, so as to complete it

by end of January, 2007, after giving opportunity to both the sides to advance their evidence as per law.

4. Now it is alleged by the plaintiffs that there are several coconut trees as well as cashew nut trees in the property and they are enjoying the fruits thereof since long. On the other hand, the learned Advocate General, on behalf of the State, submits that the land of Survey No.30 is forest land and, therefore, the State has every right to accrue the income from the property. Taking into account the prima facie evidence on record and other circumstantial evidence, it is, hereby directed that pending the suit and subject to the final adjudication of the dispute in the trial Court, the coconuts in the land shall be collected by the plaintiffs and the accounts thereof shall be maintained by them. Similarly, the cashew apples and the cashew nuts, which is a source of income of the State Government, shall be collected by the State Government for further processing and the accounts thereof shall be maintained by the State and would be presented at the time of final adjudication. Both the parties are directed to furnish those accounts to the trial Court so as to determine the rights and liabilities in that regard while disposing of the suit itself at the trial stage. With these directions, the appeal stands disposed of with no order as to costs. Consequently, the civil application also stands disposed of with no order as to costs. However, pending the

trial, subject to the above directions, the parties shall maintain status quo with regard to the suit property.

P.V. KAKADE, J.

ssm.